




UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/808,398	03/14/2001	Wolfgang Ludwig	21509	3668
535	7590	03/16/2004	EXAMINER	
THE FIRM OF KARL F ROSS 5676 RIVERDALE AVENUE PO BOX 900 RIVERDALE (BRONX), NY 10471-0900			BECKER, DREW E	
			ART UNIT	PAPER NUMBER
			1761	

DATE MAILED: 03/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/808,398	Applicant(s) LUDWIG, WOLFGANG	
	Examiner Drew E Becker	Art Unit 1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 11 and 17-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 11, 17-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Request for Continued Examination

1. The request filed on February 10, 2004 for an RCE based on parent Application No. 09/808,398 is acceptable and an RCE has been established. An action on the RCE follows.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over WO 96/36233 as applied above, in view of Horn et al [Pat. No. 6,105,490], Burkhart [Pat. No. 4,120,981], and DE 3119496A.
WO 96/36233 teaches a meat processing apparatus comprising an agitating vessel (Figure 1, #2), means for selectively heating and cooling (Figure 4, #26), circulation of cooling liquid and heating liquid (page 5, line 7) which would have inherently included a refrigeration unit and heater, respectively, a massaging drum (Figure 1, #2), and paddles (Figure 3, #16). Phrases such as "for receiving bodies of meat in contact with a treating liquid" are merely preferred methods of using the claimed apparatus and as such are not given patentable weight. WO 96/36233 does not teach a jacket or a temperature sensor with plural sensing regions connected to the heat transfer means

Art Unit: 1761

and extending through a wall of the device. Horn et al teach a meat processing apparatus comprising a jacket for heat exchange fluid (Figure 2, #30). Burkhart teaches a meat processing device comprising a vessel with a wall (Figure 5, #18), a temperature sensor extending through the wall and thermally insulated from the wall by a layer of air (Figure 5, #54), and heaters controlled via the output of the temperature sensor (Figure 5, #49). DE 3119496A teaches an apparatus comprising a temperature probe which is thrust into a meat product (Figure 2, #1-2) and which has plural sensing regions along its length (Figure 3, #I-IV). It would have been obvious to one of ordinary skill in the art to incorporate the jacket of Horn et al into the invention of WO 96/36233 since both are directed to meat processing devices, since WO 96/36233 already included means for circulating heating and cooling fluids (Figure 4, #42 & 46), since Horn et al circulated heat transfer fluid through both the jacket and the mixing vanes (Figure 3), and since the increased surface area for heat exchange provided by a jacket would have provided quicker, more responsive control of temperature within the device. It would have been obvious to one of ordinary skill in the art to incorporate the temperature sensor of Burkhart into the invention of WO 96/36233 since both are directed to meat processing devices, since WO 96/36233 already included circulation of heating and cooling fluids (page 5, line 7), and since the temperature sensor of Burkhart would have provided an efficient means for controlling the temperature within the device of WO 96/36233. It would have been obvious to one of ordinary skill in the art to incorporate the temperature probe of DE 3119496A into the invention of WO 96/36233, in view of Burkhart, since all are directed to meat processing devices, since WO 96/36233 already

included heating and cooling means (page 5, line 7), since Burkhart already included a temperature sensor within the device (Figure 5, #54), and since the temperature probe of DE 3119496A would have provided a more accurate heating, or cooling, profile due to its multiple temperature values at different depths.

4. Claims 17-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 96/36233, in view of Burkhart, as applied above, and further in view of Ludwig [Pat. No. 5,405,630].

WO 96/36233 and Burkhart teach the above mentioned components. Burkhart also teaches heaters controlled via the output of the temperature sensor (Figure 5, #49) and a controller with programming means (Figure 5, #58). WO 96/36233 and Burkhart do not teach a jacket or programming means which controls torque in a rotary paddle. Ludwig teaches a meat massager comprising a jacket (Figure 4, #20) and a programming means which controls torque (Figure 4, #30-31) in a rotary paddle (Figure 4, #23). It would have been obvious to one of ordinary skill in the art to incorporate the temperature controller of Burkhart into the invention of WO 96/36233 since both are directed to meat processing devices, since WO 96/36233 already included circulation of heating and cooling fluids (page 5, line 7), and since the temperature sensor of Burkhart would have provided an efficient means for controlling the temperature within the device of WO 96/36233. It would have been obvious to one of ordinary skill in the art to incorporate the jacket and rotary paddle of Ludwig into the invention of WO 96/36233 since both are directed to meat processing devices, since WO 96/36233 already included means for circulating heating and cooling fluids within paddles (Figure 4, #42 &

46), since Ludwig circulated heat transfer fluid through a jacket also (Figures 4, #20), and since the increased surface area for heat exchange provided by a jacket would have provided quicker, more responsive control of temperature within the device. It would have been obvious to one of ordinary skill in the art to incorporate the torque controller of Ludwig into the invention of WO 96/36233 since both are directed to methods of massaging meat, since WO 96/36233 already included rotational movement (page 4, lines 26-36), and since Ludwig teaches that torque control provided improved water bonding without damage to the muscle tissue (abstract).

5. Claims 19-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 96/36233, in view of Ludwig and Burkhart, as applied above, and further in view of DE 3119496A.

WO 96/36233, Ludwig, and Burkhart teach the above mentioned components. WO 96/36233, Ludwig, and Burkhart do not teach a temperature sensor which can be thrust into the meat and which has plural sensing regions along its length. DE 3119496A teaches an apparatus comprising a temperature probe which is thrust into a meat product (Figure 2, #1-2) and which has plural sensing regions along its length (Figure 3, #I-IV). It would have been obvious to one of ordinary skill in the art to incorporate the temperature probe of DE 3119496A into the invention of WO 96/36233, in view of Burkhart, since all are directed to meta processing devices, since WO 96/36233 already included heating and cooling means (page 5, line 7), since Burkhart already included a temperature sensor within the device (Figure 5, #54), and since the temperature probe

of DE 3119496A would have provided a more accurate heating, or cooling, profile due its multiple depths of temperature values.

Response to Arguments

6. Applicant's arguments filed January 21, 2004 have been fully considered but they are not persuasive.

The test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, DE 3119496A merely states that the temperature probe can be used "for example in a microwave oven" (page 4). This statement does not limit it to microwave ovens, but simply lists a microwave oven as one possible use for the probe. Another possible use would be the

heating device of WO 96/36233, in view of Burkhart which also taught a temperature sensor (Figure 5, #54).

Applicant argues that Ludwig does not teach a programmer which raises the temperature. However, the primary references of WO 96/36233 and Burkhart teach a means for heating (page 5, line 7 of WO 96/36233) and a heat source, temperature sensor, and programmable controller (Figure 5, #49, 54, & 58 of Burkhart).

In response to applicant's argument that Burkhart is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, WO 96/36233 is directed to a rotary vessel for heating and cooling foods, while Burkhart is directed to a rotary vessel for heating foods and measuring the temperature with a sensor.

Applicant argues that the temperature sensor of Burkhart does not touch the food. However, the temperature sensor of Burkhart was clearly placed within the vessel (Figure 6, #54) and therefore would have been "positioned for direct contact with" the food and "capable of being thrust into said vessel to pierce" the meat.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Drew E Becker whose telephone number is 571-272-

Art Unit: 1761

1396. The examiner can normally be reached on Mon.-Thur. 8am-5pm and every other Fri. 8am-4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Drew E Becker
Primary Examiner
Art Unit 1761

3-16-04